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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/297,774	05/07/1999	Kimio Ueda	JA-179	1243

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

NOTIFICATION DATE	DELIVERY MODE
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02/01/2013

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 09/297,774	Applicant(s) UEDA ET AL.	
	Examiner Michele M. Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2012.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 16-20 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 16-20 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 5, 2012 has been entered.

Claim Language Interpretation

The claim terminology is interpreted in light of the definitions at page 4, 30-31, page 4, line 33-page 5, line 4, page 5, lines 6-8, page 6, lines 3-7, page 10, lines 11-13, page 16, lines 1-2 and 6-9, and page 16, line 12-page 22, line 11, as best understood.

Claim Rejections - 35 USC § 112

The following is a quotation of 35 U.S.C. 112(a):

(a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), first paragraph:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 35 U.S.C. 112(b):

(B) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14, 16 – 20 and 23 – 28 are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, because the specification, while being enabling for a nonwoven web that may provide a diaper with a low cost landing zone capable of engaging the hooks of a hook and loop type fastener wherein such a landing zone could be utilized as a portion of a primary fastener or as a means for disposing of a soiled diaper, does not reasonably provide enablement for a diaper wherein each side panel comprises a securement member of a fastening system wherein each securement member comprises hooks of a hook and loop type fastening system wherein the hooks of the securement member are utilized to engage the web when disposing of a soiled diaper. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims. The instant specification provides a possible situation of how the web may be utilized (i.e., capable of engaging the hooks of a hook

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and loop type fastener). There is no positive recitation of the hook and loop type fastener as being a part of the absorbent article structure. Additionally, the originally filed specification discloses that such a landing zone could be utilized as a portion of the primary fastening system or as a means for disposing of a soiled diaper. Again, the disclosure indicates a possible use of the nonwoven and offers that the landing zone may possibly be used as 1) a portion of a primary fastening system OR (emphasis added) 2) a means for disposing of a soiled diaper, not both as recited in the amended claims. Further, the disclosure provides no support for utilizing hooks of a securement member to engage the nonwoven web when disposing of a soiled diaper as claimed.

Claims 14, 16 – 20 and 23 – 28 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

With respect to claims 14 and 23, the claims have been amended to recite a hook and loop type fastener. The scope of the claim is unclear. Is the fastener a hook and loop fastener or some other type of fastener? Correction and/or clarification are required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 16, 19 -20, 23 – 24 and 27 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin (US 5,543,206) in view of Buell et al (US 5,569,234).

Claims 14 and 23: See Claim Language Interpretation section supra, herein after also referred to as CLI, and '206 at the abstract, the Figures, col. 1, lines 15-19, col. 1, line 48-col. 2, line 9, col. 2, lines 20-39 and 40-43, col. 2, line 65-col. 3, line 67, col. 4, lines 50-57, col. 5, lines 21-57, col. 6, lines 1-14 and cols.6-7, Examples I and II and Table I, i.e. '206 teaches a disposable absorbent article 20 comprising a backsheet, see col. 4, lines 54-57, comprising a nonwoven web, see, e.g., col. 1, lines 58-60 and 11 and/or 14, positioned at the outermost of the absorbent article and for covering at least a portion of the outermost portion of the absorbent article, as best understood, see, e.g., col. 4, lines 54-57 and col. 17, line 66 to col. 18, line 91, wherein the nonwoven web is a spunbonded nonwoven web comprising spunbonded bi-component plastic fibers, see, e.g., col. 3, lines 12 et seq. Claim 14 further requires the backsheet comprise a containment assembly also including a topsheet and an absorbent core disposed therebetween. While '206 at col. 6, lines 6-11 and col. 4, lines 54-57 teach a web which is a backsheet of a diaper/absorbent garment, it does not teach the other components thereof explicitly.

However, Buell et al. (hereinafter "Buell") discloses a disposable absorbent article (20) comprising:

a containment assembly (col. 5, lines 46 – 58; col. 6, lines 52 - 56333), defining a containment assembly area, said containment assembly comprising a topsheet (80), a

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backsheet (40) and an absorbent core (84) disposed between the topsheet and the backsheet (col. 7, lines 59 - 65); and

a pair of side panels (64) joined to the containment assembly and defining side panel areas (figure 1A), each side panel comprising a securement member (col. 17, lines 23 – 43) wherein the backsheet comprises a plastic film (510) and a nonwoven web (542), said plastic film having an inner surface and an outer surface (figure 5), wherein the plastic film is disposed only in the containment assembly area, wherein the nonwoven web is joined to the outer surface of the plastic film such that the nonwoven web cover the entire outer surface of the plastic film and is disposed on the containment assembly and said side panel areas (figure 5), wherein the nonwoven web is a spunbonded nonwoven web comprising spunbonded bi-component plastic fibers as set forth in col. 23, lines 6 - 7 and 39 - 41 where Buell discloses that the plastic chassis layer comprises a nonwoven fabric. Nonwoven web (542) is taught as being a spunbonded bi-component plastic fibers as set forth in col. 11, lines 53 - 61.

See also '206 at col. 4, lines 50-52 and col. 5, lines 15-41.

Therefore to employ the backsheet nonwoven web of '234 as part of a containment assembly of a diaper/absorbent garment also including a topsheet and an absorbent core therebetween as claimed, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such are known components used in combination with a backsheet to define a containment assembly/a diaper/absorbent garment as claimed and the desire of '206 to define a diaper/absorbent garment.

With respect to the claimed fastener, Buell also incorporates US 3,860,003 to Buell (hereinafter '003) in col. 12, lines 31 - 44 to provide a teaching of a number of different materials and configurations of the side panels.

'003 provides an absorbent article secured with a tape fastener as set forth in col. 9, lines 44 – 57.

It would have been obvious to one of ordinary skill in the art to provide a hook and loop type fastener as opposed to a tape fastener since the prior art provides both side panels with a fastening system employing a fastener and the substitution of one type of fastener for another is within the level of ordinary skill in the art. Likewise, the examiner contends that the nonwoven of the prior art is identical to that claimed and is therefore fully capable of providing the recited function of being capable of engaging any hooks present as claimed.

Claims 16 and 24: The bi-component fiber contains a polyethylene and a polypropylene, see, e.g., col. 3, lines 45 et seq.

Claims 19 and 27: This claim requires the spunbonded nonwoven web be placed in the disposable absorbent article so that the fiber direction of the spunbonded bi-component plastic fibers is aligned with the longitudinal direction of the disposable absorbent article. It is noted that the claim does not require all the fibers and/or the entirety of each fiber be so aligned nor how such longitudinal direction of the article relates to the cross direction or machine direction of the web. See col. 5, lines 42-57 of '206, i.e. fibers, including those oriented in machine direction and/or cross-machine direction, are drawn/elongated/oriented/further oriented in the machine direction and or

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cross-machine direction of the web/backsheet due to stretching forces applied thereto, i.e. at least a portion of at two fibers are aligned as claimed. Note also paragraph 10 *infra*.

Claims 20 and 28: These claims require the spunbonded nonwoven web have a tensile strength of at least 80 gf/cm in the traverse direction of the disposable absorbent article, the nonwoven web has a hand value of Koshi of less than about 16.0 (as set forth on page 13 of the instant application, a feeling related to bending stiffness), a hand value of Shari of from about 0.5 to about 9.5 (as set forth on page 13 of the instant application, a feeling relating to a crisp and rough surface), and a hand value of Fukurami of less than about 5.0 (as set forth on page 13 of the instant application the feeling relating to bulk, richness and good formation), the nonwoven web has a fuzz level of less than about 1.0 mg/cm² (as set forth on page 13 of the instant application, a feeling that is related to skin friendliness). While '206 does not explicitly teach such claimed ranges tested in a like manner, see CLI *supra*, the '206 reference teaches a nonwoven spunbonded web as claimed having a cross-direction tensile strength, a machine direction tensile strength, a fuzz level when tested according to another test. See Examples 1 and II and Table I of '206. See also the cited portions of '206 esp. col. 1, lines 35-37, col. 2, lines 20-32, col. 6, lines 1-5 and 11-14, and page 13, lines 4 et seq of the instant application, i.e. the same purpose, e.g. nonwoven web which is reduces friction/rubbing/chaffing between web and skin, as that disclosed by Applicant. Therefore, it is the Examiner's first position that there is sufficient factual evidence for one to conclude that the similar material of the '206 reference would also include the

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claimed ranges when tested in a like manner as the claimed material. In any case, i.e. the Examiner's second position, even if the '206 does not include the claimed range, the general conditions of the claim are disclosed thereby, e.g. nonwoven spundbonded web/backsheet of similar materials for similar purpose, see discussion supra, and it is not inventive, i.e. it would be obvious to one of ordinary skill in the art, to discover the optimum or workable ranges, i.e. the claimed ranges, by routine experimentation, *In re Aller*, 105 USPQ 233 (CCPA 1955). Note the cited portions of '206 recognize that abrasion resistance, tensile strength, hand/drape are result- effective variables, i.e., variables which achieves a recognized result, e.g. , less chafing/friction between web and skin.

Claims 17 – 18 and 25 – 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin '206 in view of Buell et al (US 5,569,234) and further in view of Willey et al. '736.

Claims 17 and 25: This claim requires the bi-component fibers have a core of the polypropylene and a sheath of the polyethylene. See, e.g., col. 3, lines 48-50 and 63-67 of '206 as well as '736 at, e.g., col. 3, lines 64 et seq and thereby '536 at, e.g., page 2, lines 44-48, 51-52 and Figure 2. Therefore to make the distinct separate phases in the fibers of '206 core and sheath phases as claimed, if not already, would be obvious, *In re Siebentritt*, 54 CCPA 1083, i.e. two equivalents are interchangeable for the desired function, express suggestion of desirability not needed to render such substitution obvious, i.e. here the equivalents are interchangeable for the desired function of

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providing polypropylene/polyethylene, i.e. polyolefin, bicomponent fibers of a nonwoven backsheet of a diaper.

Claims 18 and 26: The bi-component fiber has from about 55% to about 95% by weight of the polyethylene, as best understood, see, e.g., col. 3, lines 51-53 of '206 and note MPEP 2131.03 and 2144.05.

Response to Arguments

Applicant's arguments with respect to claims 14, 16 – 20 and 23 – 28 have been considered but are moot because the arguments do not apply to any of the references being used in the current rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is (571)272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele M Kidwell/
Primary Examiner, Art Unit 3761